

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

R.C. Robinson, :
Plaintiff, :
v. : Case No. 2:07-cv-0257
Mike Koenig, : JUDGE WATSON
Defendant. :

ORDER

This matter is before the Court on the motion of R.C. Robinson, plaintiff and proposed third-party defendant, to strike the third-party complaint filed by Polymer Extrusion Technology, Inc. For the following reasons, the motion to strike will be granted.

Rule 14 of the Federal Rules of Civil Procedure governs third-party practice. The rule provides in relevant part:

(a) **When Defendant May Bring in Third Party**

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff....

Fed.R.Civ.P. 14(a).

In this instance, the purported third-party plaintiff is not a party to the action, but rather a corporation allegedly set up by the defendant and counterclaimant, Mike Koenig, at or near the time of the transaction between the original parties. The proposed third-party defendant is the plaintiff in this action, R.C. Robinson. The third-party complaint sets forth the

same claims against Mr. Robinson as are set forth in Mike Koenig's counterclaim. That Mr. Robinson may be liable to PETI for his own claims against Mr. Koenig is nonsensical. Therefore, it is clear that PETI has not, and cannot, state a third-party complaint upon which relief may be granted. PETI's suggestion in its response to the motion to strike that the Court treat the third-party complaint as a motion pursuant to Fed.R.Civ.P. 24(a) is not well-taken. Regardless of the fact that no such motion has actually been filed, PETI provides no grounds for intervention as of right.

Based on the foregoing, the motion to strike (#8) is GRANTED. It is further ORDERED that the amended motion for leave to file amended pleadings (#16) insofar as it relates to the third-party complaint is DENIED.

/s/ Terence P. Kemp
United States Magistrate Judge